

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SHAWN TITUS,)	
)	
Petitioner,)	8:19CV526
)	
v.)	
)	
SCOTT FRAKES,)	MEMORANDUM AND ORDER
)	
Respondent.)	

Mr. Titus is a convicted inmate in the custody of the State of Nebraska and is housed at the Nebraska State Penitentiary. He has brought a habeas corpus action under 28 U.S.C. § 2241. After initial review under Rule 4 of the *Rules Governing Section 2254 Cases in the United States District Courts*, I will dismiss the action without prejudice.

Petitioner asserts conditions of confinement claims such as filthy food, filthy bathrooms, dangerous overcrowding, rampant violence and the like. Habeas corpus is not the proper route to seek relief for conditions of confinement claims.

Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus, *Preiser v. Rodriguez*, 411 U.S. 475, 500(1973); requests for relief turning on circumstances of confinement may be presented in a § 1983 action.

Muhammad v. Close, 540 U.S. 749, 750 (2004).

Because it plainly appears from the petition Mr. Titus is not entitled to relief, I will dismiss this action without prejudice to reassertion in an action brought pursuant to 42 U.S.C. § 1983.

Lastly, a petitioner cannot appeal an adverse ruling on his petition for writ of habeas corpus under § 2254 unless he is granted a certificate of appealability. 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000). I have applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that:

1. The habeas corpus petition, Filing no. 1, is dismissed without prejudice.
2. The Clerk shall mail to Petitioner a copy of the Complaint for Violation of Civil Rights (Prisoner) (Rev. 12/16) and a copy of AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs.
3. Judgment will be entered by separate document. No certificate of appealability has been or will be issued.
4. The motion for appointment of counsel, Filing no. 4, is denied.

December 11, 2019.

BY THE COURT:

Richard J. Kopf

Senior United States District Judge